

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA, et al.,	CASE NO.: 1:02-cv-00107
:	:
Plaintiffs,	JUDGE S. ARTHUR SPIEGEL MAGISTRATE HOGAN
v.	RESPONSE TO MUELLER REQUEST FOR REVIEW
BOARD OF HAMILTON COUNTY COMMISSIONERS, et al.	:
Defendants.	:

The City and County Defendants ("MSD") respond to Stefanie Mueller's Motion for Review (Doc #208) as follows:

1. The MSD investigated Ms. Mueller's claim through the City of Cincinnati's claims office. The City's Claims Administrator is Shirley Lenzly.
2. Ms. Lenzly determined that the furniture items and other personal property claimed by Ms. Mueller had a replacement value of approximately \$9,305.88. The claims department does not pay for replacement value, but rather the estimated fair market value of used items, including furniture, clothing, used electronics, and computers. The determination for Ms. Mueller's items was that the fair market value of these used items was approximately 20% of the total, or \$1,861.17.
3. The receipts totaled for items replaced equal approximately \$5250, including replacement of an electronics game and a camera that were not listed in the MSD inventory of items removed from the premises (Exhibit B).

4. The MSD did determine that this incident was caused by the incapacity of the sewer system.

5. As in other cases, the City's evaluation of loss is not for the replacement of used items with newly purchased replacements, but is based on the fair market value of the property lost. If the Court prefers to use replacement cost, the City submits that the value of the invoiced items to date is \$4956.33 based on the list of receipts submitted by Ms. Mueller that are included on the MSD's original list of items removed. That list did not include the WII gaming system or a digital camera.

6. If the court determines that the MSD pay replacement value, then the claims administration process will be compelled to reimburse for items that typically are left on basement floors after the useful life of the product.

7. This office does not track individual calls from claimants. The undersigned recalls a single telephone call from Ms. Mueller. The City's claims administration attempts to consistently value the used personal property typical in basement claims. The typical fair market value of used items as calculated for basement claims is roughly 20% of its new value. This market value increases if the item was relatively new. The age of Ms. Mueller's furnishings were unknown, and neither her video game system nor her digital camera were listed on the MSD inventory. If the WII system and digital camera are included as "new" items then the value increases approximately \$500 to a total of \$2361.

Accordingly, the MDS defendants request that the Court separately review the claimed damages, and that thereafter the City be allowed to tender its settlement for \$1,861.17.

Respectfully submitted,

**JULIA L. MCNEIL (0043535)
City Solicitor**

/s/ Terrance A. Nestor

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2007 a true and accurate copy of the foregoing Response was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Terrance A. Nestor

Terrance A. Nestor (0065840)
Sr. Assistant City Solicitor